



STATE OF MARYLAND
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DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION
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BOARD OF APPEALS
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Appeals Counsel

—DECISION—

	DECISION NO.:	696-3R-83
	DATE:	June 3, 1983
CLAIMANT: John R. Evans	APPEAL NO.:	14752
	S.S.NO.:	
EMPLOYER: Potomac Insulation, Inc.	LO. NO.:	7
	APPELLANT:	CLAIMANT

ISSUE Whether the Claimant was discharged for misconduct connected with the work within the meaning of §6(c) of the Law; whether the Claimant failed, without good cause, to either apply for or to accept an offer of available, suitable work within the meaning of §6(d) of the Law; and whether the Claimant was able to work and available to work, and actively seeking work within the meaning of §4(c) of the Law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

July 3, 1983

—APPEARANCE —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon a review of the entire record in this case, the Board of Appeals affirms in part and reverses in part the decision of the Appeals Referee.

The Board adopts the findings of fact and conclusions of law of the Appeals Referee regarding §6(c) and 6(d) of the Maryland Unemployment Insurance Law.

The Board reverses the decision of the Appeals Referee with regard to §4(c) of the Law. The primary basis for this disqualification is the fact that the Claimant does not possess a driver's license. In Employment Security Administration v. Smith, 282 Md. 267 (1978), the Court of Appeals ruled that the lack of the use of an automobile could not, in and of itself, disqualify a claimant under §4(c) of the Law.

The Board sees no reason why the Smith rationale does not apply to this case. In the Julia Waring case, 847-BH-81, the Board held that the fact that a Claimant cannot perform his or her former job does not necessarily mean that such a Claimant must be disqualified under §4(c). Such a Claimant may yet be available to work within the meaning of §4(c) if the Claimant can perform the duties of a wide range of other jobs.

The Board concludes that the Appeals Referee in this case made findings not justified by the evidence in the case when he stated that the job as insulator required a driver's license. This Claimant's particular job required such a license, but there is insufficient evidence that all such jobs require a license. Also, the Appeals Referee's questioning of the Claimant was much too superficial to establish the fact that the lack of a driver's license makes him substantially unavailable for the types of work he is capable of performing. There is insufficient evidence to overcome the presumption from the Smith case that the lack of a driver's license doesn't automatically show that a person isn't meeting the requirements of §4(c) of the Law.

DECISION

The Claimant was discharged for misconduct connected with the work within the meaning of §6(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits for the weeks beginning October 17, 1982 and the nine weeks immediately following.

The Claimant did not fail to accept an offer of available, suitable work within the meaning of §6(d) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the Law.

The Claimant was able, and available for work within the meaning of §4(c) of the Maryland Unemployment Insurance Law during the period in question.

The decision of the Appeals Referee is affirmed in part, reversed in part.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits, and Federal Supplemental Compensation, unless the Claimant has been employed after the date of the disqualification.

Thomas W. Keech
Chairman

Maurice E. Hill
Associate Member

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